



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Motor Vehicle Dealer License
of All Star Rent a Car, Inc.

Case No.: TR-02-0059

FINAL DECISION

On December 10, 2002, the Department of Transportation filed a complaint alleging that All Star Rent a Car, Inc., has failed to maintain a surety bond or letter of credit as required by Wis. Stat. § 218.0114(5)(a). Based on this allegation the Department of Transportation is seeking an order suspending the motor vehicle dealer license of All Star Rent a Car, Inc. Pursuant to due notice, a hearing was conducted on February 7, 2003, in Madison, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presided.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c) the parties are certified as follows:

Wisconsin Department of Transportation, complainant, by

Attorney Charles M. Kernats
Office of General Counsel
P.O. Box 7910
Madison, WI 53707-7910

All Star Rent a Car, Inc., respondent, by

Eugene Rondon, general manager
1440 Martin Street
Madison, WI 53713

and

Attorney Gary M. May
6414 Copps Avenue, suite 128
Madison, WI 53716

The ALJ issued a Proposed Decision on February 21, 2003. On March 3, 2003, the Department of Transportation filed comments in support of the Proposed Decision with one item of clarification. On March 7, 2003, All Star Rent a Car, Inc., filed two sets of objections to the Proposed Decision. One set was signed by Eugene Rondon and the other set was signed by Attorney Gary M. May. The Department's clarification is related to the effective date of the termination of the surety bond. The Department interprets the effective termination date as sixty days from the date the Notice of Cancellation was received by the Department of Financial Institutions.

The fact that the Department of Financial Institutions did not receive the notice of cancellation until October 1, 2002, is undisputed. The surety bond requires the bonding company to provide sixty days notice in writing to both the Commissioner of Banking¹ and the Secretary of the Department of Transportation prior to terminating the surety bond. Accordingly, the Department interprets the effective date of the termination as December 1, 2002, sixty days after October 1, 2002. The record contains no confirmation from Old Republic Surety Company indicating that it will provide bond coverage for All Star Rent a Car, Inc., until December 1, 2002.

However, if the Department is willing to accept proof of the existence of a surety bond or irrevocable letter of credit retroactive to December 1, 2002, as a condition for licensing All Star Rent a Car, Inc., the Division of Hearings and Appeals has no basis to require otherwise. The Findings of Fact are amended to include a finding that the notice of cancellation was received by the Department of Financial Institutions on October 1, 2002, and the effective date of the termination of the bond is December 1, 2002. The order is amended accordingly.

In its objections, All Star Rent a Car, Inc., renews the arguments made during the hearing that the Notices of Cancellation issued by Old Republic Surety Company are defective. Therefore, the bond issued to All Star Rent a Car, Inc., has not been lawfully terminated and remains in effect. All Star Rent a Car, Inc., argues that the Division of Hearings and Appeals is the proper forum to litigate the issue of whether Old Republic Surety Company lawfully cancelled the surety bond issued to All Star Rent a Car, Inc., and that Old Republic Surety Company has the burden to prove it lawfully terminated the surety bond.

All Star Rent a Car, Inc., has cited no authority for either of these propositions. Moreover, Old Republic Surety Company is not even a party to these proceedings. As stated in the Proposed Decision, it is the responsibility of All Star Rent a Car, Inc., to provide proof of the existence of a surety bond or irrevocable letter of credit satisfying the requirements of Wis. Stat. § 218.0114(5)(a). All Star Rent a Car, Inc., has failed to do so. Other than the amendments described above, the Proposed Decision is adopted as the Final Decision in this matter.

¹ The former Commissioner of Banking has been merged with other agencies to form the Department of Financial Institutions.

Findings of Fact

The Administrator finds:

1. All Star Rent a Car, Inc., (All Star or the respondent) is a motor vehicle dealer conducting business at 1440 Martin Street, Madison, Wisconsin. All Star Rent a Car, Inc., holds a motor vehicle dealer license issued by the Department of Transportation (Department).
2. Motor vehicle dealers are required by Wis. Stat. § 218.0114(5)(a) to maintain a \$25,000 surety bond or letter of credit as a condition of obtaining and maintaining a motor vehicle dealer license. All Star had a surety bond that had been in place since June 3, 1996, Bond #RLI-476558 from Old Republic Surety Company (exh. 11).
3. On July 23, 2002, Old Republic Surety Company issued a Notice of Cancellation for the surety bond issued to cover All Star. The Notice of Cancellation informed the Department that, effective September 29, 2002, it was terminating the bond for All Star.
4. Notice of Cancellation must be sent to both the Department of Transportation and the Department of Financial Institutions. The Department of Financial Institutions did not receive the Notice of Cancellation from Old Republic Surety Company until October 1, 2002. The Notice of Cancellation indicated that it was effective retroactive to September 29, 2002. However, because a sixty day written notice of cancellation is required, the Department interprets the effective date of termination as December 1, 2002 (affidavit of Vikki L. VanDeventer).
5. All Star has not provided evidence of a replacement surety bond or irrevocable letter of credit to the Department.

Discussion

The respondent does not dispute that Old Republic Surety Company issued a Notice of Cancellation for its surety bond. With respect to cancellation, the bond provides that “[t]his bond may be terminated by surety giving 60 days written notice to both the Commissioner of Banking and the Secretary of Transportation.” The respondent contends that Old Republic Surety Company sent the Notice of Cancellation to the Department’s Dealer Section, not the Secretary of the Department. The respondent argues that the cancellation is not effective unless it is sent directly to the Secretary of the Department of Transportation.

No statutory or regulatory requirement exists that requires the Notice of Cancellation of a surety bond be sent directly to the Secretary of the Department of Transportation. The surety bond is issued on a form drafted by the Department. The form requires that the surety bond be filed with the Department’s Dealer Section at P.O. Box 7909, Madison, WI 53707-7909. This is also the address that Old Republic Surety Company sent the Notice of Cancellation. The Dealers

Section is the section of the Department that is charged with the responsibility of monitoring whether motor vehicle dealers are in compliance with Wis. Stat. § 218.0114(5)(a).

Old Republic Surety Company's sending the Notice of Cancellation to the Department's Dealers Section was reasonable, despite the requirement in the form that the notice be sent to the Secretary of the Department of Transportation. If the Department is satisfied that it was provided adequate notice of the cancellation by Old Republic Surety Company, the respondent has no basis to use this, at most, technical notice deficiency as an affirmative defense in this matter.

Even if the fact that the Old Republic Surety Company sent the Notice of Cancellation to the Wisconsin Department of Transportation, Dealer Section rather than the Secretary of the Department, was determined to be a deficiency that made the cancellation invalid, this would be a matter to be raised by the respondent with Old Republic Surety Company. It is the responsibility of the respondent to provide proof of the existence of a surety bond in compliance with Wis. Stat. § 218.0114(5)(a). The surety bond is a contract between the respondent and Old Republic Surety Company. The respondent is responsible for enforcing the terms of the surety bond in an appropriate forum and provide proof that the surety bond has not been lawfully cancelled.

At this time, the Department considers the surety bond issued to the respondent to have been cancelled. The Division of Hearings and Appeals does not have authority to order Old Republic Surety Company to continue in effect the surety bond issued to the respondent. Unless and until the respondent obtains some form of injunctive relief ordering Old Republic Surety Company to continue its coverage of the respondent, the respondent is not in compliance with Wis. Stat. § 218.0114(5)(a).

Conclusions of Law

The Administrator concludes:

1. Pursuant to Wis. Stat. § 218.0116(1)(d) failure to maintain the surety bond or letter of credit required by Wis. Stat. § 218.0114(5)(a) is grounds for the suspension of the license of a motor vehicle dealer license.
2. Pursuant to Wis. Stat. §§ 218.0116(4)(c) and 227.43(1)(bg), the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The motor vehicle dealer license of All Star Rent a Car, Inc., is suspended and shall remain suspended unless and until All Star Rent a Car, Inc., provides to the Department of Transportation proof of the existence of a surety bond or irrevocable letter of credit in compliance with Wis. Stat. § 218.0114(5)(a) effective retroactive to December 1, 2002. This order shall be effective ten days from the date of the final order in this matter.

Dated at Madison, Wisconsin on March 13, 2003.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744

By _____
David H. Schwarz
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.